

Bylaws Tune-up

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Community Development Program



Types of Organizational Documents

- Articles of Incorporation
- Declaration of Covenants, Conditions and Restrictions or Deed of Restrictions -Homeowner Association
- Master Deed - Condominium Association
- Policies and Procedures
Such as conflicts of interest policies and financial procedures

Definition of Bylaws

- Bylaws are the code of rules adopted for the regulation or management of the affairs of an organization.

The Role of Bylaws

- Define official action of the organization.
- Establish structure of the organization.
- Define rights and responsibilities.
- Help ensure that basic tasks are done.
- Provide structure for resolving disputes.

The Use of Bylaws

- DO give copies to members and directors when they join the association.
- DO make sure the membership and board understand the basic provisions of the bylaws.
- DON'T file them away and forget them!

Review of Bylaws

- Bylaws should be reviewed to see if changes are necessary:
 - When an organization incorporates or applies for tax-exempt status.
 - In response to changes in the law.
 - In response to changes or problems in an organization.
 - On a regular periodic basis.

Kentucky Nonprofit Corporation Acts

- Located at Kentucky Revised Statutes (*KRS 273.161 to 273.390*).
- Contains requirements, default provisions and optional provisions for nonprofit corporations in Kentucky including many provisions concerning bylaws. **Requirements are in bold type.**
- Available at public libraries or in the Kentucky Business Organizations Laws and Rules Annotated, published by LexisNexis.

Membership

KRS 273.187

- If a corporation has one or more classes of members, the articles or by-laws must state:
 - Designation of such class/classes
 - Manner of election or appointment
 - Qualifications and rights of the members of each class.
- If there are no members, articles or bylaws must state that.

Membership Meetings

KRS 273.193

- Annual meeting of members shall be held at such time as indicated in bylaws.
- Special meetings may be called by the president, the board of directors or some number or proportion of members as provided in the articles or by-laws. In absence of provision fixing such number or proportion, members holding one-twentieth of votes may call special meeting.

Membership Meetings

KRS 273.193 (continued)

- Special meetings may be called by other officers or persons, as specified in the articles or by-laws.
- By-laws may specify the location of meetings. In absence of a bylaws provision, meetings shall be held at the registered office of the corporation.

Notice of Membership Meetings

KRS 273.197

- Unless otherwise provided in articles or by-laws, written notice stating the place, day and hour of meeting and, if a special meeting, the purpose(s) must be delivered:
 - No less than 10 nor more than 35 days before the meeting.
 - Personally or by mail.
 - By the president, secretary or person calling the meeting.
 - To each voting member entitled to vote.

Voting by Members

KRS 273.201

- Corporation may limit, enlarge or deny the right to vote to any class of members by provision in articles or bylaws, but if not limited, enlarged or denied, each member has one vote on each matter submitted to members for a vote.
- Proxy voting is allowed unless otherwise provided in articles or bylaws.

Membership Quorum

KRS 273.203

- Bylaws may provide the number or percentage of members entitled to vote or number or percentage of votes which shall constitute a quorum at a meeting of members.
- In the absence of such provision, members holding one-tenth of the votes to be cast shall constitute a quorum.

Action by Membership

KRS 273.203

- Minimum requirements for official membership action are that the matter in question receive at least a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, unless a greater proportion is required by the Nonprofit Corporation Act, the articles or bylaws.

Greater than Majority Vote

- In cases where members have the right to vote on amendment of articles of incorporation, merger or consolidation or voluntary dissolution of the corporation, a two-thirds majority is required (*KRS 273.263, 283 and 300*).
- Organizations may choose higher than simple majority vote requirements, such as for removal of a director and amendment of bylaws.

Board of Directors - Powers

- The affairs of a corporation shall be managed by a board of directors (*KRS 273.207*).
- Options to consider: Bylaws can spell out powers in more detail.

Board of Directors Qualifications

KRS 273.207

- Articles or bylaws may specify qualifications for directors.
- Directors need not be Kentucky residents unless articles or bylaws require.
- Options to consider: Membership in the organization, commitment to the purposes.

Number of Directors

KRS 273.211

- KRS requires at least three directors.
- Subject to the above, the number of directors shall be set forth in the bylaws, except for the number of the first board of directors, which number shall be fixed by the articles of incorporation.
- In absence of a bylaw fixing the number of directors it shall be the same as the number stated in the articles of incorporation.

Changes in the Number of Directors

KRS 273.211

- The number of directors may be increased or decreased by amendment to bylaws, unless articles require this to be done by amendment of articles.
- No decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

Term of Office

KRS 273.211

- Articles or bylaws may set the term of office for directors.
- In absence of a provision in articles or bylaws, the term of office is one-year and until his/ her successor is elected and has accepted his/ her election.
- Directors may be divided into classes and terms of different classes need not be uniform.
- Option to consider: Staggered terms; term limits.

Removal of Directors

- A director may be removed from office pursuant to any procedure provided in the articles of incorporation (*KRS 273.211*).

Vacancies

KRS 273.213

- Unless otherwise provided in the articles or bylaws, any vacancy and any seat to be filled by reason of an increase in the number of directors may be filled by majority vote of the remaining directors, though less than a quorum of the board of directors.
- A director elected to fill a vacancy is elected for the unexpired term of his/her predecessor.

Quorum of Directors

KRS 273.217

- Unless otherwise provided in articles or bylaws, a majority of the number fixed by the bylaws shall constitute a quorum for the transaction of business. In absence of a bylaws provision fixing the number of directors, a majority of the number stated in the articles constitutes a quorum.

Official Action of the Board

KRS 273.217

- The act of a majority of directors present at a meeting at which a quorum is present shall be the act of the board unless the act of a greater number is required by the Nonprofit Corporation Act, articles or bylaws.

Meetings of the Board of Directors

KRS 273.223

- Meetings may be held in or out of state on such notice as the bylaws may prescribe. Purposes need not be stated in notice.
- Attendance of a director at any meeting constitutes a waiver of notice, unless director attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Action by Members or Directors Without a Meeting

KRS 273.377

- Any action required to be taken or which may be taken at a meeting of members or directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof or all the directors, as the case may be.

Payments to Directors and Officers

- Loans from corporation to directors are prohibited. (*KRS 273.241*).
- A corporation may pay compensation in a reasonable amount to its directors and officers for services rendered (*KRS 273.237*).
- Typically bylaws state that directors will not receive compensation for their service as directors.

Officers

KRS 273.227

- The bylaws or the board must delegate to one of the officers responsibility for preparing minutes of the directors and members meetings and for authenticating records of the corporation.
- Otherwise the corporation can have such officers as described in bylaws or appointed by the board.

Term of Office

KRS 273.227

- **An officer's term shall not exceed three years.**
- Each officer shall be elected or appointed at such time and in such manner and for such term as set forth in the articles or by-laws.
- In absence of such provision, officers shall be elected annually by the board of directors.

Election of Officers

KRS 273.227

- Articles or bylaws may prescribe the manner of election or appointment of officers (*KRS 273.227*).
- Options to consider: Whether officers are elected by board of directors or membership.

Removal of Officers

KRS 273.231

- Any officer may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby.
- Removal of an officer shall be without prejudice to any contract rights of the officer so removed.

Optional Provisions for Officers

- Resignation: Include provision similar to that for directors requiring written resignation.
- Vacancies: Include a provision similar to that for directors providing method for filling vacancies in officer position for remainder of term.

Duties / Authority of Officers

KRS 273.228

- Each officer shall have the authority and perform the duties set forth in the bylaws or to the extent consistent with the bylaws the duties prescribed by the board or by direction of an officer so authorized by the board.

Committees of Directors

KRS 273.221

- If the articles or bylaws so provide, the board can designate and appoint one or more committees, each of which shall consist of two or more directors and to the extent authorized, shall have and exercise the authority of the board of directors.
- Committees authority is subject to list of statutory limitations including: Committees do not have authority to amend or repeal bylaws or articles, merge or dissolve the corporation.

Executive Committee

- Executive committee is generally composed of the officers.
- Bylaws should describe the authority and power of the executive committee.
- Should include who calls meetings and quorum.

Committees

Options to Consider

- Standing and ad hoc/special committees.
- Finance committee.
- Nominating committee.
- Rules for committees: Who appoints chair and members, chair's duties, quorums, authority to call meetings, etc.

Books and records

KRS 273.233

- Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors and shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote.

Inspection of records

- All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time (*KRS 273.233*).
- Other laws contain open records requirements such as Kentucky Open Records Act and Internal Revenue Code and may apply.

Additional Inspection of Records Options

- Who can request records?
- Written request.
- Right to request may include right to make copies, with requester paying cost.
- Who receives requests to inspect?
- How much notice is required for request to inspect?

Financial Provisions

- Fiscal year.
- Number of signatures required for checks.

Limitation of Director Liability

KRS 273.248

- Corporations have the option to limit the personal liability of directors for breach of directors duties, with the exception of breaches involving directors conflict of interest, misconduct or violation of law.
- KRS provides this can be set forth in Articles of Incorporation.

Indemnification

KRS 273.171

- A corporation has the power to indemnify its director(s) against expenses incurred in defending a lawsuit against the director(s) except for cases in which a director is found liable for negligence or misconduct in the performance of duties to the corporation.
- A corporation can make any other indemnification authorized by the articles, bylaws or resolution adopted after notice to members entitled to vote.

Waiver of Notice

KRS 273.373

- Whenever any notice is required to be given to any member or director under the Nonprofit Corporation Act, the articles or bylaws, a waiver thereof in writing signed by the person entitled to the notice, before or after, shall be the equivalent to the giving of notice.

Sample Provision on Parliamentary Authority

- Roberts Rules of Order shall apply to all situations not covered by the Articles of Incorporation, bylaws or any special rules adopted by the board of directors.
- The board of directors shall determine from time to time which edition shall be used.

Amendment of Bylaws

- Who has the right to amend?
- How much notice of proposed amendment.
- What kind of majority (simple, two-thirds or some other amount) is required for amendment to pass.

Record of Amendments

- It is useful to show on the document itself the date of amendments, for example:
 - Amended March 2005: Articles IV, V and IX.
 - This makes it easy to know if members are looking at the same version and can prevent confusion as to what the current version is.